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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,886	01/29/2004	Peter Lisec	4301-1081	2301
466 7590 02/21/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER WARD, JESSICA LEE	
			ART UNIT	PAPER NUMBER
			1733	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/21/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/765,886

Applicant(s)

LISEC, PETER

Examiner

Jessica L. Ward

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/30/07,RCE.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-13 is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

RCE

1. The request filed on 1/30/07 for a RCE under 37 CFR 1.114 based on parent Application No. 10/765,886 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lisec (US 4369084, of record).

Lisec teaches the claimed limitations:

- essentially vertical plates (1, 2)
- conveyor means (9) for insulating glass sheet to be filled with heavy gas
- seal (11) in a space between the plates and aligned essentially vertically (column 1, lines 64-66)
- seal (11) being between the plates and being adjustable solely perpendicular to a plane of the plates (column 1, line 64 – column 2, line 10)
- sealing elements (11) on two vertical edges of the plates for sealing a space between the plates to the outside (column 1, lines 64-66 and column 2, lines 1-9);

*It is noted that the present claim language does not exclude the seal from also being a sealing element. Stated differently, the present claim language is not limited to sealing elements that are distinct from, or in addition to, the seal.

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4. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Halle (DE 4315986, on-line translation attached to Foreign Patent).

Halle teaches the claimed limitations:

- essentially vertical plates (5, 6) (Figure 2)
- conveyor means (26) for insulating glass sheet to be filled with heavy gas
- seal (10 or 12) in a space between the plates and aligned essentially vertically (Figure 3)
- seal (10 or 12) being between the plates and being adjustable solely perpendicular to a plane of the plates
- sealing elements (10, 12) on two vertical edges of the plates for sealing a space between the plates to the outside

*It is noted that the present claim language does not exclude the seal from also being a sealing element. Stated differently, the present claim language is not limited to sealing elements that are distinct from, or in addition to, the seal.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

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ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-10 are rejected on the ground of nonstatutory obviousness-type double

patenting as being unpatentable over claims 1-18 of U.S. Patent No. 4,369,084 to Lisec.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the '084 Patent encompass the limitations set forth in the claims of the present application.

Allowable Subject Matter

7. Claims 11-13 are allowed.

With respect to claim 11, the prior art fails to teach or suggest at least one seal oriented essentially vertically in a space between the plates, with the seal being movable solely perpendicular to the plane of the plates, and **additional seals** on two vertical edges of the plates for sealing the space between the plates to the outside.

With respect to claims 12-13, the prior art fails to teach or suggest the groove being provided in a central region of the plates. Note Lisec '084 teaches all of the limitations recited in these claims but the grooves/recesses for accommodating the seals 11 are located at the vertical edges of the plates (column 1, lines 64-66).

Response to Arguments

8. Applicant's arguments filed 1/30/07 have been fully considered but they are not persuasive.

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9. On p. 6 of the remarks, Applicant argues that Lisec only discloses two seals 11 and the sealing elements associated with the top horizontal edges of the plates (13, 15) do not correspond to the sealing elements recited in claim 1.

As stated above, the present claim language does not exclude the seal from also being a sealing element. Stated differently, the present claim language is not limited to sealing elements that are distinct from, or in addition to, the seal. Therefore, the seals 11 of Lisec also read on Applicant's claimed sealing elements.

10. On p. 7 of the remarks, Applicant argues that Lisec does not teach a groove that runs essentially vertically as recited in claim 2.

The Examiner points out that Applicant has misinterpreted Lisec because the reference does in fact teach such a groove/recess (column 1, lines 64-66).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Ward whose telephone number is 571-272-1223. The examiner can normally be reached on Mon-Fri between 9AM and 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica L. Ward
Primary Examiner
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A handwritten signature in black ink, appearing to read "Jessica Ward", with a long horizontal flourish extending to the right.